

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Commercial Proposals for Distributing
Radio or Television Programs for Reception On
Board School Buses
MB Docket No. 09-68

REPORT

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By the Chief, Media Bureau:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. BACKGROUND 4
III. DISCUSSION 11
A. The Nature of the Material Proposed to be Distributed and Whether It Is Age-
Appropriate 13
1. Music 14
2. Original Programming 26
3. Public Service Announcements 27
B. The Amount and Nature of Commercial Advertising Being Distributed 29
C. Safety Issues 41
D. Whether Commercial Programming Services for Reception by Public School Buses Are
In the Public Interest 44
IV. CONCLUSION 45
V. ORDERING CLAUSES 46
Appendix A – BusRadio Content Guidelines
Appendix B – BusRadio School District Agreement

I. INTRODUCTION

1. In the Omnibus Appropriations Act of 2009 (“Appropriations Act”), Congress directed the Commission to issue a report regarding “commercial proposals for broadcasting radio or television programs for reception on board specially-equipped school buses operated by, or under contract with, local public educational agencies.”¹ In particular, Congress charged the Commission with examining: (i) “the nature of the material proposed to be broadcast and whether it is age appropriate for the passengers”; (ii) “the amount and nature of commercial advertising to be broadcast”; and (iii) “whether such broadcasts for reception by public school buses are in the public interest.”² On May 20, 2009, the Media Bureau issued a *Public Notice* seeking comment on the commercial programming services currently being developed or offered for reception on board school buses; each of the issues identified for examination in the statutory directive; and any additional issues relevant to the Commission’s report.³ Through this *Report*, we fulfill our statutory obligation to address these issues, which are important to ensuring the health, safety and well-being of school children in the United States.

2. Although the Appropriations Act directs us to consider all commercial proposals for broadcasting radio and television programs on board public school buses, the record in this proceeding has identified only one such service that is currently being offered or publicly discussed – BusRadio.⁴ We note that our *Public Notice* in this proceeding yielded hundreds of informal comments by a broad range of interested parties, including parents, child specialists, educators, school administrators, bus drivers, transportation officials, and child advocacy groups, the vast majority of whom oppose allowing BusRadio on school buses. At the same time, we recognize that BusRadio’s service is not limited to program offerings, but includes non-programming related features that potentially can enhance the safety and well-being of school bus passengers. For the BusRadio supporters that filed comments in this proceeding, many of whom have direct experience with BusRadio, the benefits of these additional features outweigh any perceived harms from the service.

3. We conclude that the issue of whether services such as BusRadio serve the public interest may be one most appropriately decided at the local level, where individual school districts in close partnership with parents and other stakeholders can weigh the particular benefits and potential harms of the service in their communities.⁵ We note, however, that parents and other concerned parties can make

¹ Explanatory Statement, Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Division D (2009).

² *Id.*

³ *Comment Dates Established for Report to Congress on Commercial Programming Services Targeted to Children Onboard School Buses*, Public Notice, MB Docket 09-68 (rel. May 20, 2009). On June 19, 2009, Media Bureau staff requested that BusRadio respond to a series of questions relevant to the Commission’s report in this proceeding. Letter from Raelynn Remy, Stacy Katz and Kiersten Kamman, Policy Division, Media Bureau, Federal Communications Commission, to Michael Yanoff, Chief Executive Officer, BusRadio, MB Docket No. 09-68 (June 26, 2009) (memorializing phone conference of June 19, 2009) (“*Media Bureau Staff Letter*”).

⁴ While the text of the statute directs us to consider all such services “broadcast” on board school buses, BusRadio does not provide traditional broadcast services regulated under Title III of the Communications Act of 1934, as amended (“the Act”). See *infra* ¶¶ 5-6, 12. However, BusRadio is the only commercial service identified in this proceeding that otherwise satisfies the description of services targeted by the relevant statutory provision.

⁵ The issue of whether commercial programming services like BusRadio promote the public interest is one that can also appropriately be addressed at the state level. For example, the New York State Board of Regents adopted rules in 1990 prohibiting commercial activity on school grounds, including school buses. Comments of Campaign for a Commercial Free Childhood (“CCFC”) at 38 (*citing* Commercial Alert, www.commercialalert.org/NYSEDMemoBusRadio.pdf (visited Aug. 1, 2009)). In addition, concerns about school bus advertising, including interior billboards and BusRadio, led the South Carolina Board of Education to ban all advertising on school buses. CCFC Comments at 38; Obligation, Inc. Comments at 14.

educated decisions about services such as BusRadio only if given access to timely, accurate, and complete information about the programming practices and content to which their children are or will be exposed. To that end, we discuss in this *Report* the various components of BusRadio's service, since it is the only such service identified in this proceeding, and specific issues and concerns raised in the record, which may be applicable to any similar service offered onboard public school buses. This *Report* also identifies ways service providers such as BusRadio may keep the public adequately informed about its service offering to enable interested parties to assess whether the service is, in fact, promoting the best interests of children.

II. BACKGROUND

4. The Commission has long been concerned with the potential impact of media content on children. As early as 1960, the Commission recognized that television broadcasters must address the needs of children in order to fulfill their public interest obligations.⁶ Since that time, the Commission, in various contexts,⁷ has imposed on television licensees requirements, including restrictions and affirmative obligations, designed specifically to serve the needs of children.⁸ In recognition of the Commission's extensive experience in the area of children's programming, Congress more recently has charged the agency with implementing legislation intended to address other concerns regarding children's access to media,⁹ and the Commission has sought to fulfill its statutory obligations in a number of different proceedings.¹⁰ Moreover, the Commission has initiated its own efforts to curb some of the ill-effects of

⁶ *Report and Statement of Policy Re: Commission En Banc Programming Inquiry*, 44 FCC 2303 (1960).

⁷ See, e.g., *Children's Television Report and Policy Statement*, 50 FCC 2d 1 (1974), *aff'd*, *Action for Children's Television v. FCC*, 564 F.2d 458 (D.C. Cir. 1977); *Television Programming for Children, A Report of the Children's Task Force*, Federal Communication Commission (Oct. 1979); *Children's Television Programming and Advertising Practices*, Report and Order, 96 FCC 2d 634 (1984), *aff'd*, *Action for Children's Television v. FCC*, 756 F.2d 899 (D.C. Cir. 1985); *Policies and Rules Concerning Children's Television Programming*, Report and Order, 6 FCC Rcd 2111 (1991) ("*Children's Television Programming Order*"); *Policies and Rules Concerning Children's Television Programming*, Report and Order, 11 FCC Rcd 10660 (1996); *In the Matter of Children's Television Obligations of Digital Television Broadcasters*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 22943 (2004); Order on Reconsideration, 20 FCC Rcd 2055 (2005); Second Order on Reconsideration and Second Report and Order, 21 FCC Rcd 11065 (2006) ("*Children's Television Second Report and Order*").

⁸ See 47 C.F.R. § 73.671 (imposing on television broadcasters an affirmative obligation to offer educational and informational children's programming; provide parents and consumers with advance information about core programs being aired; identify the types of programs that qualify as core programs; and air at least three hours per week of "core" programs). In addition, Commission rules impose restrictions on certain licensees regarding the amount and manner of airing commercial content during children's programming. See 47 C.F.R. §§ 73.670, 76.225. The Commission also bars radio and television stations from broadcasting indecent material between the hours of 6 a.m. and 10 p.m. 47 C.F.R. § 73.3999.

⁹ See Children's Internet Protection Act, Pub. L. 106-554, *codified at* 47 U.S.C. § 254(h) (requiring, among other things, that schools and libraries that receive funding for Internet access or internal connections from the Commission's E-rate program certify that they have instituted an Internet safety policy and adopted measures to block or filter access to inappropriate Internet content by minors); Child Safe Viewing Act of 2007, S. 602, P.L. 110-452, 122 Stat. 5025 (December 2, 2008) (directing the Commission to initiate a proceeding to examine "the existence and availability of advanced blocking technologies that are compatible with various communications devices or platforms"); Cf. Letter from Hon. Joe Barton, Chairman, U.S. House of Representatives Committee on Energy and Commerce, *et al.*, to Hon. Michael K. Powell, Chairman, Federal Communications Commission (March 5, 2004) (requesting that the Commission undertake an inquiry on, among other things, television violence and its impact on children).

¹⁰ *In the Matter of Federal-State Joint Board on Universal Service, Children's Internet Protection Act*, CC Docket No. 96-45, Report and Order, 16 FCC Rcd 8182 (2001); *In the Matter of Implementation of the Child Safe Viewing* (Continued on next page)

media exposure on children.¹¹

5. BusRadio¹² is a Massachusetts-based media company that provides music, original programming, commercial content, and public service announcements (“PSAs”) to more than one million young listeners between the ages of 6 and 18 every weekday during their daily school bus ride.¹³ Founded in 2004, BusRadio states that it reaches more than 8,500 buses in 170 school districts in 24 states.¹⁴ In addition to programming, BusRadio provides each of its buses with certain safety features including a global positioning satellite (“GPS”) device,¹⁵ a driver “emergency panic button” (“EPB”) tied to local emergency services,¹⁶ and an internal and external public address (“PA”) system,¹⁷ all of which

Act; Examination of Parental Control Technologies for Video or Audio Programming, MB Docket No. 09-26, Report, FCC 09-69 (rel. Aug. 31, 2009); *In the Matter of Violent Television Programming and Its Impact on Children*, MB Docket No. 04-261, Report, 22 FCC Rcd 7929 (2007).

¹¹ In 2007, the Commission, together with Sens. Tom Harkin and Sam Brownback, established the Joint Task Force on Media and Childhood Obesity in an effort to build consensus on voluntary steps to combat childhood obesity, a growing health concern linked to excessive television exposure. See Federal Communications Commission, www.fcc.gov/obesity (visited July 14, 2009).

¹² BusRadio asserts that it is the first and only radio show delivered exclusively to school buses nationwide. See BusRadio, www.busradio.net (visited July 14, 2009). See also Commercial Alert Comments at 1 (referring to BusRadio as the “leading and perhaps only purveyor of” commercial programming targeted to children on board school buses); CCFC Comments at 2 (“BusRadio, Inc. [is] currently the only company offering commercial programming targeted to children on board school buses”).

¹³ See BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009). BusRadio first began to install units on buses in the fall of 2006. BusRadio states that in less than two years, its listenership grew to more than 1 million. *Id.*

¹⁴ BusRadio Comments at 1.

¹⁵ The BusRadio unit (“BRU”) has both an integrated GPS receiver and an embedded cellular modem. BusRadio Response to Media Bureau Staff Letter (June 29, 2009) at 2 (“BusRadio Response”). The GPS receiver computes location information every fifteen seconds while the bus is operating, and the BRU logs this data. GPS data are offloaded from the BRU to BusRadio’s servers in two ways: (i) data is uploaded to BusRadio’s main server every day during a nightly update via a wireless local area network (“LAN”); and (ii) data is transmitted via the BRU’s embedded cellular modem, provided there is a persistent cellular data connection. These retrieval methods allow BusRadio to provide the following GPS services: (i) real-time GPS tracking; (ii) historical “end-of-day” location information; and (iii) bus stop proximity notification, also known as “MyBusAlert.” *Id.* at 3. The latter service, which provides parents with information about their child’s bus arrival time, has been tested in several communities, but is not currently available for general use.

¹⁶ Each BRU has the capability to dial 911 in the event of an emergency via the EPB. BusRadio Response at 4. The sole function of the EPB is to dial 911 using an embedded cellular modem so that the BRU can be used to communicate with a 911 operator in the same manner as a telephone receiver. To activate the EPB, the user must press the first and sixth buttons on the front panel in any mode and hold them for approximately one second. The 911 call is then placed over a cellular connection using the embedded cellular modem and the call can be heard over the speakers in the bus, as well as from a speaker in the front panel of the BRU. In addition, there is a public address microphone in the front panel of the BRU for hands-free communication. If a user picks up the microphone and keys the button, the audio input is routed through to the call, enabling 911 operators to maintain bi-directional communication with the bus driver. *Id.*

¹⁷ The BusRadio PA microphone operates similarly to PA systems installed on many buses. BusRadio Response at 5. There is a four-pin PA microphone input jack on the face of the BRU where the BusRadio-supplied microphone can be attached. Any input to this microphone, when operated, will override the audio (either a BusRadio playlist or **(Continued on next page)**)

are provided at no cost to the subscribing school district.¹⁸ In addition, BusRadio units are capable of receiving traditional FM and AM radio broadcasts.¹⁹ BusRadio produces eight hours of original programming each day for students at three age levels – elementary school, middle school, and high school; and a student field trip programming segment for mixed age groups.²⁰ On average, BusRadio delivers four minutes of PSAs and safety messages, and four minutes of commercial content, per hour.²¹

6. BusRadio distributes its programming every evening using the Internet and wireless technology from its centralized programming facility to each of the radio units installed in BusRadio-serviced buses nationwide.²² The “assets”²³ and “playlists”²⁴ that comprise BusRadio’s programming are inserted into the system at BusRadio’s corporate headquarters in Needham, Massachusetts.²⁵ BusRadio is then delivered over a secure Internet link to co-located servers in Marlborough, Massachusetts for processing and transit.²⁶ Assets and playlists are encrypted and sent over the Internet to the microservers which then distribute the programming via an unlicensed wireless LAN to buses parked in depots.²⁷ Bus drivers are then able to select one of the three age-designated BusRadio programs that have been pre-loaded onto the radio units.²⁸

AM/FM programming) and amplify the input throughout the bus. In addition, there is an “inside/outside” switch that allows the audio from the microphone to be routed either to the internal amplified speakers of the bus, or, in some cases, to an externally mounted bull horn. *Id.*

¹⁸ See BusRadio, www.busradio.net (visited July 14, 2009); BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009). BusRadio assumes all costs associated with the installation and maintenance of its radio units. BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009). BusRadio derives its income from the sale of advertising on school bus programs and its website. CCFC Comments at 4. Paragraph 5 of BusRadio’s School District Agreement also entitles each school district to participate in a revenue pool comprised of five percent “of gross advertising sales associated with on-bus programming.” BusRadio Response at 10. The provision allows Bus Radio, “in its sole discretion,” to determine how this pool is distributed according to a formula which “takes into account the length of the contract and duration of the contract relationship with each school district, the number of students in the school district and the usage of the [programming content] as monitored by Bus Radio.” BusRadio School District Agreement, Exhibit A.5.

¹⁹ See BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009).

²⁰ *Id.*

²¹ *Id.*; BusRadio Comments at 2. BusRadio maintains that it limits commercial content to a maximum of eight minutes per hour. BusRadio Comments at 2.

²² See BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009).

²³ “Assets” are individual audio components and include music, disc jockey breaks, PSAs, school bus safety messages, promotions and advertisements. BusRadio Response at 2.

²⁴ “Playlists” are instruction sets that the BRU interprets to generate the audio stream. *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* Operational data are simultaneously offloaded from the buses to the microservers and back to the servers via the same network. Internet connections vary in type across the BusRadio network. BusRadio’s existing network utilizes digital subscriber line (“DSL”), satellite, cable, and school Internet facilities. *Id.*

²⁸ See BusRadio, www.busradioparents.com/q-and-a (visited July 14, 2009). Before BRUs are installed on a fleet of buses, a team of technicians is dispatched to each district to assess the needs and capabilities of the bus depot. The timing of the installation process depends upon the individual needs of each bus depot and varies by district. After

(Continued on next page)

7. BusRadio describes its service as a favorable alternative to FM radio programming that ensures “a safer bus ride for students by providing school districts with valuable safety features that help minimize driver distractions, and keep students seated, well-behaved and occupied in a positive way.”²⁹ BusRadio claims that its service addresses the most important concerns of schools and parents – student safety and “age-appropriate” listening content.³⁰ Indeed, BusRadio claims that safety is the number one reason that school districts subscribe to its service.³¹ To buttress its assertion, BusRadio points to a study it commissioned showing that overall student behavior improved dramatically with the implementation of BusRadio programming.³² BusRadio also asserts that bus drivers are not required to play its programming for a specific amount of time or at all and can elect to turn off the service at their discretion.³³ BusRadio supporters agree with many of these claims, noting that BusRadio improves bus behavior by keeping students engaged and reminding them of bus rules through frequent public service messages.³⁴ In particular, BusRadio supporters assert that the interactive nature of the service, which invites students to participate in contests and “shout outs,” keeps students entertained and less likely to engage in disruptive behavior.³⁵ School transportation officials also note a marked decrease in parental complaints concerning inappropriate radio content following their school district’s installation of BusRadio units.³⁶

8. In general, advocates of BusRadio cite the service’s safety features as a principal reason for their support. These commenters, including school personnel and parents, state that they are put at ease knowing that their districts’ school buses are equipped with ancillary services such as a 911

the assessment has been completed, a wireless LAN and microserver are installed in each bus depot, and the individual radio units are installed on each bus. *Id.*

²⁹ See BusRadio, www.busradioparents.com/myth-vs-reality (visited July 14, 2009). BusRadio’s arguments are addressed in greater detail in Section III. *infra*.

³⁰ BusRadio Comments at 1.

³¹ *Id.*

³² *Id.* at 1-2.

³³ BusRadio Response at 7.

³⁴ See, e.g., Comments of Josh Rice (Director of Transportation, noting a reduction in discipline problems in his school district since the installation of BusRadio); Comments of Kerry Hudson (Bus driver, asserting that BusRadio is a useful tool to reward good behavior); Comments of Erica Hix (Bus driver, noting a substantial difference in student behavior when BusRadio is unavailable). Two parties in this proceeding question the credibility of some pro-BusRadio commenters, claiming that such commenters have received some pecuniary benefit from the company or have a financial stake in its success. See Obligation, Inc. Reply at 1-3, 7; CCFC Reply at 3-4.

³⁵ See, e.g., Comments of Sandi Thompson (stating that her students enjoy giving a “shout out” to their bus drivers and friends); Comments of Joe Knight (explaining that BusRadio contests allow students living in economically depressed areas to win prizes that they would not have otherwise been able to afford); Comments of Josh Rice (noting that a number of his students have won money or prizes through contests); Comments of Michael Peiffer (noting that students are encouraged to participate in BusRadio programs through song requests and contests).

³⁶ See, e.g., Comments of James Kendrick (stating that since the installation of BusRadio, his school district has not received a single complaint regarding inappropriate radio programming); Comments of Mark Lappitt (noting the end of parent phone calls regarding inappropriate disc jockey discussion and playlists after the installation of BusRadio); Comments of Michael Sloan (explaining that he has received only one complaint concerning BusRadio programming and that upon informing BusRadio of the complaint, the material was immediately removed from the BusRadio playlist).

emergency panic button and GPS tracking.³⁷ Some commenters further argue that school districts lacking financial resources would be unable to afford such crucial and potentially life saving features absent BusRadio.³⁸ Commenters also note the safety benefits of BusRadio's internal public address system, which provides bus drivers with a tool to reprimand students without diverting their eyes from the road.³⁹ In general, advocates contend that the benefits derived from BusRadio's safety features outweigh any harms resulting from the service's commercial content. Such supporters note that BusRadio distributes fewer than eight minutes of promotional content per hour, and that some of this content originates from BusRadio partners that encourage reading and writing, social responsibility, and healthy living.⁴⁰

9. BusRadio critics dispute all of these claims, arguing that the service undermines the ability of parents to monitor their children's exposure to media and marketing messages, and exploits an audience of school children unable to turn off or otherwise avoid BusRadio's programming and advertising.⁴¹ School children on a school bus are a captive audience.⁴² These parties also contend that BusRadio's programming content is not age-appropriate because it includes songs from controversial artists or from albums with parental warnings, and promotes violent video games and television programs that glamorize teen sex and alcohol use.⁴³ Parties also allege that BusRadio encourages children to visit its listener website, BusRadio.com, which also contains questionable material.⁴⁴ Moreover, these commenters express concern about exposing children to BusRadio's programming in a school environment, arguing that such programming carries the school's implicit endorsement even when it runs

³⁷ See Comments of Scott Limberg; *see also* Comments of Ted Gerlach (explaining that school bus policy forbids his child, who has a severe food allergy, from carrying an "EpiPen" on the bus and, therefore, having an emergency 911 button on the school bus is a crucial safety feature in case of an extreme allergic reaction).

³⁸ See, e.g., Comments of Nicholas Schraufnagel (noting the high cost of the safety features found in BusRadio if purchased independently); Comments of Terry L. Linn (asserting that BusRadio is most likely the only means by which rural districts and contractors may obtain GPS units on school buses, as the costs associated with purchasing GPS units separately would be prohibitive).

³⁹ See, e.g., Comments of Jennifer Falardeau (stating that the internal PA system allows bus drivers to keep their eyes on the road while reprimanding children, instead of having to look in the rearview mirror and shout to students); Comments of Rob Schmedeke (explaining that the PA system allows the bus driver to immediately address a student if he or she is misbehaving on the bus or in danger outside of the bus).

⁴⁰ See, e.g., Comments of Bob Stone (explaining that "less than eight minutes of every hour of [BusRadio] programming [is] taken up with positive, age-appropriate sponsorships"); Comments of Ruth Falardeau (asserting that BusRadio does not "bombard" children with ads, but rather exposes children to a maximum of eight minutes in every hour of programming); Comments of Jennifer Quinn (explaining that BusRadio contests revolve around reading, writing and social responsibility); Comments of Lisa Forseca (asserting that BusRadio teaches children good behavior, healthy living, and ways to better themselves).

⁴¹ See, e.g., CCFC Comments at 5-9; Comments of Heather Young (asserting that the content aired on BusRadio is bad for children and encourages them to explore subjects they are not ready for); Comments of Patricia Blochowiak (noting that because parents are not present, they are unable to explain the nature of advertising to the youngest children who generally do not distinguish between ads and other content).

⁴² Obligation, Inc. Comments at 11.

⁴³ See, e.g., CCFC Comments at 24-31; Comments of Rebecca Soule; Comments of Anna Polack; Comments of Inge Harding.

⁴⁴ See, e.g., CCFC Comments at 29-30; Obligation, Inc. Comments at 11.

contrary to lessons the school is attempting to impart.⁴⁵ Some parties further contend that commercial programming such as that distributed by BusRadio is a factor in many of the key problems facing children today, such as childhood obesity, discontent about body image and eating disorders, sexualization, youth violence, and family stress.⁴⁶ In addition, one commenter asserts that BusRadio disproportionately affects lower income families, arguing that parents who might oppose BusRadio may not have other options, such as driving their children to school or sending them to private school, that other parents who do not rely on government-funded school transportation might have.⁴⁷

10. Opponents of BusRadio also allege that the service presents a variety of health and safety concerns.⁴⁸ Such parties argue, among other things, that the placement of speakers, the volume of programs, and the content – which is often targeted to bus drivers – diminish bus safety.⁴⁹ A number of commenters, especially parents, express concern over their inability to access a listing of BusRadio’s advertisers and playlists prior to the distribution of such programming on board the bus.⁵⁰ Finally, a few commenters claim that BusRadio’s programming and practices run afoul of children’s programming restrictions adopted by the Commission and the Council of Better Business Bureau’s Children’s Advertising Review Unit (“CARU”), a section of the advertising industry’s self-regulation program that evaluates child-directed advertising and promotional material in all media.⁵¹

⁴⁵ See, e.g., CCFC Comments at 11-13; Commercial Alert Comments at 2; Comments of David Kahn; Comments of Jim Steitz. For example, one commenter points to BusRadio advertisements for Answers.com that encourage students to complete their homework by looking up answers on the Internet. CCFC Comments at 11-13.

⁴⁶ See Letter from CCFC and Obligation, Inc. to Michael J. Copps, Acting Chairman, Federal Communications Commission, MB Docket No. 09-68, at 1 (June 30, 2009); see also Commercial Alert Comments at 1 (advertising targeted to students is morally objectionable, damaging to public health and youth development and incompatible with schools’ educational mission); Comments of Wendy Michael (BusRadio encourages materialism, poor eating habits and value marketing).

⁴⁷ Comments of Susan Ganbari.

⁴⁸ See Obligation, Inc. Comments at 7-10; Comments of Connor Kurtz (arguing that bus drivers are encouraged to place telephone calls while driving the bus in order to win prizes); Comments of Monica Bocaner (radio noise can make it difficult for students with hearing disabilities to talk with other children or “hear instructions from the [hearing] aid and bus driver. The road noise is bad enough - having additional background noise like bus radio makes it impossible for [such students] to focus on speech and develop . . . language skills”); Comments of Stacey Ann Edwards (children with autism, who have auditory processing difficulties and sound sensitivities, can experience physical pain from some music).

⁴⁹ See, e.g., Obligation, Inc. Comments at 7-10; Comments of Anne Moland Syme; Comments of Gale Coolbaugh; Comments of Kathy Heikes.

⁵⁰ See CCFC Comments at 9; Comments of Dorothy Wisniewski; Comments of Crystal Conklin.

⁵¹ See, e.g., CCFC Comments at 13-14, 17-19 (BusRadio violates the Commission’s rules requiring a clear separation between editorial and advertising content in children’s broadcasting, including the long-standing prohibition on “host selling”); CCFC Comments at 22, Obligation, Inc. Comments at 11-12 (BusRadio DJs promote the company’s sponsors without identifying the promotions, thereby exploiting the relationship between on-air personalities and young listeners); CCFC Comments at 22, Obligation, Inc. at 10-11 (BusRadio promotes its exclusive music artists without disclosing its financial interest in the promotion); Obligation, Inc. Comments at 12, CCFC Comments at 19-22 (BusRadio violates the Commission’s commercial advertising limits on children’s programming by understating the amount of commercial content that is aired); CCFC Comments at 35 (BusRadio interferes with AM/FM radio broadcasts); CCFC Comments at 22, 27-28 (BusRadio violates the Commission’s rules regarding the display of website addresses during children’s programming and BusRadio.com fails to make clear distinctions between its advertising and editorial content).

III. DISCUSSION

11. As noted above, Congress mandated in the 2009 Appropriations Act that the FCC study and report upon several discrete issues relating to commercial programming services provided on board specially-equipped school buses operated by, or under contract with, local public educational agencies.⁵² Pursuant to the Appropriations Act, the study shall examine “the nature of the material proposed to be broadcast and whether it is age appropriate for the passengers.”⁵³ In addition, the study shall examine “the amount and nature of commercial advertising to be broadcast.”⁵⁴ Finally, the study shall consider “whether such broadcasts for reception by public school buses are in the public interest.”⁵⁵ Pursuant to Congress’ directive, and based upon our review of the record in this proceeding, we address each of these issues, in turn, below.

12. BusRadio holds no broadcast licenses and thus is not subject to our broadcast regulations.⁵⁶ Nevertheless, we find that some of the obligations and restrictions applicable to broadcast licensees, while not enforceable in this context, offer a relevant benchmark for assessing whether a particular program or practice is in the public interest. For example, insofar as the Commission has encouraged or required licensees to offer particular kinds of programming or institute certain practices, the Commission’s actions are an appropriate measure for identifying what type of content or activities promote the public interest.⁵⁷ Likewise, to the extent the Commission has prohibited or circumscribed the ability of regulatees to engage in practices analogous to those at issue here, the Commission’s findings serve as a useful gauge for assessing whether BusRadio’s conduct is detrimental to the public interest.⁵⁸ This is particularly true with regard to the Commission’s rules in the area of children’s programming, where the interests sought to be protected are parallel.⁵⁹

A. The Nature of the Material Proposed to be Distributed and Whether It Is Age-Appropriate

13. Our examination of the nature and age-appropriateness of BusRadio programming necessarily requires a consideration of each type of programming made available by BusRadio. The record in this proceeding indicates that BusRadio provides its listeners with four principal types of programming: (i) music; (ii) original programming, including disc jockey-hosted radio shows and

⁵² Explanatory Statement, Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Division D (2009).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ BusRadio Response at 5.

⁵⁷ *See, e.g.*, 47 C.F.R. § 73.671 (requiring television broadcast licensees to serve the educational and informational needs of children through their overall programming and programming specifically designed to serve such needs); 47 C.F.R. § 73.673 (requiring commercial television broadcast licensees to provide information identifying programming specifically designed to educate and inform children to publishers of program guides, including the age group for which the program is intended).

⁵⁸ *See, e.g.*, 47 C.F.R. § 73.670(a) (barring commercial television broadcasters from airing more than 10.5 minutes of commercial matter per hour during children’s programming on weekends, or more than 12 minutes of commercial matter per hour on weekdays); 47 C.F.R. § 73.670(d)(1) (barring entities subject to the commercial time limits from displaying web site addresses during or adjacent to children’s programming in certain circumstances).

⁵⁹ Commission requirements governing children’s programming do not apply to an unregulated commercial programming service such as BusRadio. Given that BusRadio distributes its programming to an audience of children, however, those requirements are relevant in evaluating whether BusRadio’s service is in the public interest.

contests; (iii) public service announcements and safety messages; and (iv) commercial content or paid sponsorships. Each type of content is age-tailored for three distinct groups – elementary school children (ages 6-11); middle school children (ages 12-14); and high school students (ages 15-18). With regard to each type of programming, we discuss in greater detail below the content made available by BusRadio and whether such content is “age-appropriate” for its listeners, consistent with our statutory mandate.⁶⁰

1. Music

14. Music makes up a substantial portion of BusRadio’s programming.⁶¹ BusRadio asserts that its music programming is “age-appropriate”⁶² and that its editing process produces radio programming that is far more appropriate for its school-age listeners than any other editing standard used in radio.⁶³ BusRadio maintains that it does not play standard FM radio versions of many popular songs, and eliminates all inappropriate lyrics and subject matter from its programming.⁶⁴ In addition, BusRadio is able to customize programming content, including music, to address the individual needs of the communities it serves.⁶⁵ Where necessary, BusRadio remixes songs to avoid any reference to the deleted lyrics or subject matter.⁶⁶

15. BusRadio has established internal guidelines for determining whether particular content, including music, is age-appropriate for its listeners.⁶⁷ To develop these guidelines, BusRadio assembled an “independent Content Review Board” comprised of individuals in the fields of child psychology, education, publishing and music programming.⁶⁸ The guidelines provide that BusRadio will refrain from disseminating any content that qualifies as “inappropriate subject matter.”⁶⁹ Such subject matter includes references to: (i) assault and other violence; (ii) criminal acts; (iii) gang activity; (iv) guns and other weapons; (v) disrespect; (vi) drugs, alcohol and smoking; (vii) swear words; (viii) racial, religious, and sexual slurs or other prejudice; and (ix) sexual innuendo.⁷⁰

16. Moreover, BusRadio’s Content Guidelines aim to: (i) avoid content that is political or partisan; (ii) play content that educates, entertains and positively impacts children; (iii) remove any content that is deemed questionable by a parent, school official or other interested party; (iv) encourage commercial sponsors to deliver positive, socially responsible messages; (v) screen content of all advertisements to ensure messages and subject matter are appropriate; (vi) update PSAs to reflect the most current issues facing children; (vii) play music that satisfies BusRadio’s Music Review Process; and

⁶⁰ Because the Appropriations Act identified “commercial advertising” as a separate category of programming to be examined by the Commission, we discuss BusRadio’s commercial content in Section III.B. *infra*.

⁶¹ See BusRadio, www.busradioparents.com/q-and-a (visited May 12, 2009).

⁶² BusRadio Comments at 1.

⁶³ *Id.* at 2.

⁶⁴ *Id.* See BusRadio Comments, Att., for a sample playlist of the music selections distributed by BusRadio.

⁶⁵ BusRadio Comments at 2.

⁶⁶ See BusRadio Content Guidelines. The Content Guidelines are set forth in Appendix A to this *Report*.

⁶⁷ *Id.*

⁶⁸ *Id.* BusRadio dissolved its Content Review Board after the guidelines were developed. See Email from Michael Yanoff, Chief Executive Officer, BusRadio, to Raelynn Remy, Policy Division, Media Bureau, Federal Communications Commission, July 1, 2009 (requesting confidential treatment of board member names).

⁶⁹ BusRadio Content Guidelines at 1.

⁷⁰ *Id.*

(viii) ensure that BusRadio's Content Guidelines are posted on the company's website.⁷¹

17. BusRadio states that as part of its music review process, it scrutinizes all CD packaging for printed lyrics and parental advisory warnings.⁷² In addition, BusRadio reviews packaging on all "Promo Only" and record company advance CDs, which contain content warnings and indicate whether a "cleaner" version is available.⁷³ BusRadio starts with the FM radio version of songs and follows a three-step process that is performed by two separate individuals: Listen, Read and Refuse.⁷⁴ First, BusRadio listens to each song for inappropriate lyrics, noises or sounds that could prove distracting to drivers, e.g., fire sirens, tires screeching.⁷⁵ Where necessary, BusRadio edits the programming.⁷⁶ If BusRadio is able to remove objectionable content and the remaining subject matter is appropriate, BusRadio considers the song for distribution.⁷⁷ Second, BusRadio reads all music lyrics to screen for inappropriate content.⁷⁸ Finally, BusRadio refrains from playing any song that qualifies as "inappropriate subject matter" as defined by the Board.⁷⁹

18. Although BusRadio's music review process prevents it from playing songs with parental advisories, some commenters assert that children nevertheless are exposed to artists known for their explicit lyrics whose albums often come with parental warnings.⁸⁰ These commenters claim that, because each song played by BusRadio effectively constitutes a promotion for the album on which it is carried, exposing children to such songs, even though "clean," raises serious concerns for parents and other caregivers.⁸¹ For example, Obligation, Inc. claims that one of the groups played by BusRadio, "Bone Thugs-N-Harmony," has an established reputation for lyrics relating to drugs, sex and violence.⁸² CCFC identifies additional BusRadio-promoted artists that are similarly controversial.⁸³ Obligation, Inc. contends that playing a "clean" version of an otherwise inappropriate song promotes the artist, his/her CDs (including those with parental advisories), and the explicit version of the song, because children are unable to purchase a BusRadio-edited version.⁸⁴

⁷¹ *Id.* at 2. BusRadio's Content Guidelines do not appear to be posted on the company's website, *see* BusRadio, www.busradio.com (visited September 3, 2009), despite the fact that such guidelines commit the company to doing so. *Id.* ("BusRadio will . . . [p]ost [its] content guidelines on the company's website").

⁷² *Id.*

⁷³ *Id.*

⁷⁴ BusRadio Response at 8; *see also* BusRadio Content Guidelines at 2-3.

⁷⁵ BusRadio Response at 8.

⁷⁶ *Id.* BusRadio's editing process does not include "bleeping out" content. *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ BusRadio Content Guidelines at 1.

⁸⁰ *See* CCFC Comments at 25; Obligation, Inc. Comments at 4-7.

⁸¹ CCFC Comments at 26; Obligation, Inc. Comments at 4-7.

⁸² Obligation, Inc. Comments at 5.

⁸³ CCFC Comments at 25 (claiming that BusRadio plays songs by Seether, Akon, Lil' Jon, Fergie, and Kevin Rudolf). BusRadio claims that it does not play many of the songs identified by critics as having been included in BusRadio programs. *See* BusRadio, www.busradioparents.com/myth-vs-reality (visited May 12, 2009).

⁸⁴ Obligation, Inc. Reply at 5.

19. To address concerns regarding the propriety of its programming, including musical recordings, BusRadio enables parents and other parties to monitor content through the online posting of its daily programs after they have been disseminated.⁸⁵ Interested parties are able to listen to the entire program that was downloaded to the bus that day by accessing BusRadio's website.⁸⁶ In addition to online monitoring, BusRadio asserts that it has developed a system for addressing feedback from listeners, school officials and parents.⁸⁷ If the feedback involves a request by a school district to remove particular programming, and BusRadio determines that the objectionable content originated from one of its programs, BusRadio maintains that it is able to regionalize its programming and remove the content from that school district while continuing to play it in others.⁸⁸

20. Despite these efforts, BusRadio opponents contend that parents and school districts are unable to monitor BusRadio content effectively, given the amount of time required to check every artist's discography, lyrics, or background.⁸⁹ For example, Obligation, Inc. claims that a parent must listen for at least two hours to determine what music has been played, and that even then, the parent has little information because BusRadio often fails to identify artists at the time their music is distributed.⁹⁰ CCFC further asserts that, even if parents were able to so monitor BusRadio's programs, such monitoring would be untimely and ineffective because parents are only able to hear programs after they have been distributed.⁹¹

21. The divergent views of these commenters regarding the "age-appropriateness" of BusRadio's musical selections confirm that such a determination is a "challenging and often subjective" one.⁹² In our view, the issue of whether particular music is appropriate for its intended child audience is one that is best determined by the parents, caregivers, and school officials charged with protecting their interests.⁹³ We recognize, however, that the interests of the children cannot adequately be protected absent the tools and processes necessary to effectively monitor a child's exposure to potentially harmful influences, including music. To enable parents and other parties to make educated decisions about BusRadio, we identify issues warranting further consideration and inquiry with regard to BusRadio's music programming.

22. We find that BusRadio's Content Guidelines could be revised to set forth more objective criteria that would enable parents and other caregivers to more effectively monitor program content. For example, it is unclear under BusRadio's Content Guidelines precisely what types of "swear words" or

⁸⁵ BusRadio Comments at 2.

⁸⁶ BusRadio Response at 7 (stating that programs can be accessed at www.busradioparents.com). BusRadio states that registered users are able to hear select regional programs exactly as they were broadcast. *See* BusRadio, www.busradioparents.com/myth-vs-reality (visited May 12, 2009).

⁸⁷ BusRadio Response at 6.

⁸⁸ *Id.* BusRadio claims that, in the rare instances in which such complaints have been lodged, the programming in question neither contravened the company's Content Guidelines nor was played by mistake. *Id.*

⁸⁹ *See* Obligation, Inc. Comments at 5; *see also* CCFC Comments at 10.

⁹⁰ Obligation, Inc. Comments at 6. CCFC claims that parents with children of different ages must spend at least four hours each day to learn what was played on their children's buses. CCFC Comments at 10.

⁹¹ *Id.*

⁹² BusRadio Response at 8.

⁹³ We note that none of the commenters has claimed that BusRadio's purportedly objectionable programming constitutes prohibited "indecent" or "obscene" material. *See* 18 U.S.C. § 1464.

“sexual innuendo” BusRadio would edit out of its programming.⁹⁴ In addition, although BusRadio justifies the adoption of its own guidelines on the basis that “no independent organization rates music based on its appropriateness for a specific age group,”⁹⁵ there appears to be at least one such organization that currently provides age ratings for music.⁹⁶ Reliance by BusRadio on ratings provided by third parties, in addition to its own Content Guidelines, would be helpful particularly since BusRadio’s guidelines were developed by its now-defunct Content Review Board, which was comprised of only four individuals, one of whom was a BusRadio principal.⁹⁷

23. BusRadio’s Content Guidelines may well be a useful tool in identifying age-appropriate content, but the effectiveness of the guidelines is difficult to assess without meaningful monitoring of compliance. It is unclear whether, or to what extent, BusRadio conforms its practices to the Content Guidelines.⁹⁸ In this regard, we find valid some commenters’ views that the posting of BusRadio’s daily programs – after they have been distributed – fails to enable parents to avoid exposure of their children to undesirable content.

24. Although BusRadio asserts that school districts control what is played on their buses,⁹⁹ it is not certain when, or to what extent, school districts are able to exercise such control. For example, BusRadio’s standard agreement grants school districts “the right to reject . . . [c]ontent at any time if it deems such [c]ontent age inappropriate,” but provides that such right “shall not be deemed and is not intended to be the right to dictate [c]ontent.”¹⁰⁰ Under the terms of the contract, BusRadio also provides school districts with “[t]he right to review and refuse [c]ontent[,] provided . . . that such refusal shall only be made with respect to age inappropriateness”¹⁰¹ While the contracting school district’s right to “review” programming suggests the right to screen music selections prior to their distribution, it is unclear whether BusRadio has permitted or would permit school districts to review content or playlists in advance, or whether such review would be construed as “dictating content.”¹⁰² Although BusRadio

⁹⁴ BusRadio Content Guidelines at 1.

⁹⁵ BusRadio Response at 8.

⁹⁶ See Common Sense Media, www.common sense media.org. Common Sense Media is a non-partisan, not-for-profit organization comprised of “concerned parents and individuals with experience in child advocacy, public policy, education, media and entertainment” who seek to provide trustworthy information and tools, as well as an independent forum, so that families “can have a choice and a voice about the media they consume.” In addition to songs, Common Sense Media rates and reviews movies, TV shows, books, video games and websites according to developmental recommendations from some of the nation’s leading authorities. For more information about how Common Sense Media rates media for “age appropriateness,” see Common Sense Media, www.common sense media.org/about-us/our-mission/about-our-ratings (visited July 20, 2009).

⁹⁷ BusRadio Content Guidelines at 1.

⁹⁸ For example, BusRadio’s Content Guidelines do not appear to be posted on the company’s website, though the guidelines themselves provide that BusRadio will post them.

⁹⁹ See BusRadio, www.busradioparents.com/myth-vs-reality (visited May 12, 2009).

¹⁰⁰ BusRadio School District Agreement, Exhibit A.2, Att. to BusRadio Response. BusRadio’s School District Agreement is contained in Appendix B to this *Report*.

¹⁰¹ *Id.* BusRadio’s agreement is for a five-year term and permits a subscribing school district to terminate service at any time if BusRadio’s programming content is, in its reasonable and good faith belief, continually objectionable. Prior to such termination, the school district must provide written notice of its objection to BusRadio and give BusRadio 30 days to cure or remove the objectionable content. *Id.*, Exhibit A.8. In contrast, Bus Radio has the right to terminate, with thirty days’ prior notice, “at any time and for any reason.” *Id.*

¹⁰² See *id.*, Exhibit A.2.

maintains that it would consider “formal requests for song catalogue playlists,”¹⁰³ at least one commenter maintains that BusRadio, in the past, has refused to make available a listing of song titles, artists, and CD titles on its website.¹⁰⁴ Similarly, it is uncertain whether BusRadio would agree, prospectively, to remove songs by controversial artists whose music has otherwise been edited and deemed appropriate for dissemination. To the extent a school district’s right to “control” programming is not prospective in nature, but rather is limited to post-distribution review and complaints, such a right may not be deemed useful by school districts and parents interested in monitoring and possibly preempting the dissemination of material found to be objectionable.

25. It is also unclear to what extent BusRadio permits post-distribution monitoring of its programs. While some parties have claimed that BusRadio does not maintain archives of its radio shows,¹⁰⁵ BusRadio asserts that it stores program logs, playlists and audio assets on its servers for an entire school year that can be rendered into an MP3 file or transferred to a CD and provided upon request.¹⁰⁶ Moreover, it is not certain whether BusRadio would honor requests by individual parents to remove particular programming, or whether such removal can be effectuated only upon the request of a school district with whom BusRadio has a contractual relationship.¹⁰⁷ To the extent that BusRadio is able to address the above concerns by clarifying or expanding its existing guidelines and processes, and taking steps to ensure greater transparency in its operations, such measures would enable parents and other concerned parties to guard more effectively against programming content, including music, considered to be age inappropriate.

2. Original Programming

26. In addition to musical recordings, BusRadio’s program content consists of “original programming,” defined to include on-air personalities, contests, and listener shout-outs.¹⁰⁸ BusRadio asserts that its original programming and music comprise, on average, approximately 52 minutes of the program content distributed each hour.¹⁰⁹ In general, parties opposing BusRadio do not dispute the age-appropriateness of its original programming, but rather BusRadio’s failure to count such programming toward the time devoted to commercial content. These parties contend that, because a substantial portion of the content involving BusRadio DJs and contests are promotional in nature, BusRadio understates by a significant degree the amount of advertising included in its programs.¹¹⁰ Thus, they assert, it is difficult to gauge precisely how much time per hour BusRadio devotes to commercial content. Because BusRadio’s use of on-air personalities to conduct promotions and listener contests raises concerns regarding the amount of commercial content actually provided by BusRadio, we discuss those aspects of BusRadio’s “original programming” at greater length in Section III.B *infra*.

¹⁰³ BusRadio Response at 7.

¹⁰⁴ Obligation, Inc. Comments at 6.

¹⁰⁵ *See id.*; CCFC Comments at 10.

¹⁰⁶ BusRadio Response at 7.

¹⁰⁷ *Id.* at 6 (“If appropriate, [BusRadio] will contact the person that made the removal request to update them on their school department’s decision”).

¹⁰⁸ *See* BusRadio, www.busradio.net (visited May 12, 2009).

¹⁰⁹ *See id.*

¹¹⁰ *See, e.g.*, CCFC Comments at 19-20 (although BusRadio claims that each hour contains an average of four minutes of paid sponsorships, this figure does not capture all of the commercial content on BusRadio); Obligation, Inc. Comments at 12 (“Additional advertising is sneaked into the non-commercial part of show [sic]”).

3. Public Service Announcements

27. BusRadio partners with several non-profit organizations to deliver public service messages to its child listeners.¹¹¹ According to BusRadio, an average of four minutes per hour of programming is devoted to bus safety tips and public service announcements.¹¹² BusRadio's PSA partners include Students Against Destructive Decisions ("SADD"),¹¹³ City Year,¹¹⁴ President's Council on Physical Fitness and Sports,¹¹⁵ Take Pride in America¹¹⁶ Stand Up for Kids,¹¹⁷ the National Eating Disorders Association,¹¹⁸ Afterschool Alliance,¹¹⁹ Do Something,¹²⁰ KaBOOM!,¹²¹ and the Ad Council.¹²² Some of the PSAs that BusRadio has delivered are intended to raise awareness about environmental issues, the perils of drunk driving, staying in school, bullying, and unlawful downloading of Internet material.¹²³

¹¹¹ BusRadio Comments at 2.

¹¹² *Id.*

¹¹³ SADD is a "peer-to-peer education, prevention, and activism organization dedicated to preventing destructive decisions, particularly underage drinking, other drug use, risky and impaired driving, teen violence, and teen suicide." See Students Against Destructive Decisions, www.sadd.org/mission (visited July 20, 2009).

¹¹⁴ City Year is a youth service corps that recruits young people of all backgrounds for a year of full-time service in schools and neighborhoods across the United States. See City Year, www.cityyear.org/whatwedo (visited July 20, 2009).

¹¹⁵ The President's Council on Physical Fitness and Sports is an advisory committee of volunteer citizens which seeks to promote health, physical activity, fitness, and enjoyment for all people through participation in physical activity and sports. See President's Council on Physical Fitness and Sports, www.fitness.gov/about (visited July 20, 2009).

¹¹⁶ Take Pride in America is a national partnership program that promotes volunteer service on America's public lands. See Take Pride in America, www.takepride.gov/aboutus/index.html (visited July 20, 2009).

¹¹⁷ Stand Up for Kids is a national organization that assists volunteers who "go to the streets in order to find, stabilize, and otherwise help homeless and street kids improve their lives." See Stand Up for Kids, www.standupforkids.org (visited July 20, 2009).

¹¹⁸ The National Eating Disorders Association is an organization "dedicated to providing education, resources and support to those affected by eating disorders." See National Eating Disorders Association, www.nationaleatingdisorders.org (visited July 20, 2009).

¹¹⁹ The Afterschool Alliance is an organization that works "to ensure that all children have access to affordable, quality afterschool programs." See Afterschool Alliance, www.afterschoolalliance.org/aboutus (visited July 20, 2009).

¹²⁰ Do Something is an organization that encourages teen volunteers to become involved in causes that are meaningful to them. See Do Something, www.dosomething.org (visited July 20, 2009).

¹²¹ KaBOOM! is a national non-profit organization that encourages and assists communities in the building of playgrounds. See KaBOOM!, www.kaboom.org (visited July 20, 2009).

¹²² The Ad Council is a non-profit organization that "marshals volunteer talent" from the advertising and communications industries, the media, and business and non-profit communities to deliver public service messages to the American public in areas such as "improving the quality of life for children, preventative health, education, community well being, environmental preservation and strengthening families." See Ad Council, www.adcouncil.org (visited July 20, 2009).

¹²³ See BusRadio Comments, Att. (listing transcribed public service messages carried on BusRadio in recent months).

28. None of the parties in this proceeding has raised concerns regarding the age appropriateness of BusRadio's public service messages, or disputed that such messages seek to promote the best interests of its child listeners. Indeed, the Commission has long encouraged the efforts of programmers to deliver content that promotes the public interest. This is particularly true with regard to child-targeted programming, where the Commission has imposed on television licensees affirmative obligations to serve the educational and informational needs of their viewing audience.¹²⁴ We note that PSAs comprise a relatively small percentage of the total programming distributed by BusRadio every hour.

B. The Amount and Nature of Commercial Advertising Being Distributed

29. BusRadio critics express particular concern about the service's commercial content. Specifically, commenters raise concerns regarding, among other things, the amount of commercial content to which children are exposed; the nature and propriety of such commercials; the lack of information regarding BusRadio's ads and advertisers; BusRadio's purported failure to represent accurately the amount of commercial content distributed; and the detrimental impact of such content on children.¹²⁵ As challenging as it is for parents to guard against unwanted content, the process is complicated further when children are exposed to such content in a school setting. As one commenter notes:

Despite major marketing inroads in recent years, schools remain a relatively commercial-free space for kids. From an advertiser's point of view, that means there is less clutter and competition. Because schools are a public and non-commercial space, children do not have their guard up against advertising. . . . The school venue thus offers an implicit endorsement by important sources of authority in children's lives. And, crucially, children are compelled to attend schools; schools – and school buses – thus can deliver kids' time and attention in a way no other advertising vehicle can.¹²⁶

Indeed, the Commission has acknowledged the persuasive influence of media messages when endorsed by entities with whom their intended audience believes to have an established relationship.¹²⁷ This is especially true for advertising directed to children, an audience that the Commission has long recognized as being particularly vulnerable to commercial messages.¹²⁸

30. BusRadio maintains that its paid sponsorships, which comprise an average of four minutes of programming each hour, are vetted for suitability in the same manner as all other BusRadio

¹²⁴ See 47 C.F.R. § 73.671.

¹²⁵ See generally CCFC Comments; Commercial Alert Comments.

¹²⁶ Commercial Alert Comments at 2. CCFC similarly asserts:

Everything marketed under the auspices of a school implicitly carries that school's endorsement. Children cannot be expected to separate the message from the messenger, so if students believe an advertised product is school-approved, they are likely to believe it is good for them The school's implied endorsement or "halo effect" is one reason that marketers find targeting children in school desirable.

CCFC Comments at 11.

¹²⁷ See *infra* ¶ 35 (discussing the policies underlying the Commission's "host selling" restriction).

¹²⁸ See *Children's Television Programming Order*, 6 FCC Rcd at 2118; see also CCFC Comments at 6 (citing studies regarding the inability of children to evaluate advertising messages).

content, including music.¹²⁹ In reviewing commercial content, BusRadio asserts that it considers existing age ratings for products, services and media.¹³⁰ Under BusRadio's content review process, for example, a "PG-13" rated movie would not be deemed an appropriate sponsor for elementary or middle school programming, but might be considered acceptable for the high school audience.¹³¹ In addition, BusRadio asserts that it refuses to accept paid sponsorships for products that are deemed unhealthy for children, and encourages commercial sponsors to deliver positive, socially-responsible messages.¹³² BusRadio's commercial sponsors include, among others, Answers.com, Disney's Buena Vista Entertainment, Konami, and Cingular Wireless.¹³³ The company claims that its paid sponsorships are a favorable alternative to standard drive time FM radio, which averages more than three times the amount of commercial programming disseminated on BusRadio.¹³⁴ In support of its assertion, BusRadio points to a recent study by Georgetown University's Center on Alcohol Marketing and Youth, which found that more than one third of all alcohol advertising on commercial radio is likely to be heard by youth listeners between the ages of 12 and 20, as well as research by the University of Pittsburgh School of Medicine, which found that one in three popular FM radio songs mentions alcohol or drug use.¹³⁵

31. Despite BusRadio's claims, critics complain that BusRadio does not disclose its advertisers or a sample of the commercials it carries, thus rendering it impossible to verify the company's assertions.¹³⁶ CCFC contends that it has been able to identify some of BusRadio's sponsors only through programs posted on the company's parent website, media accounts of such programs, and BusRadio's promotional materials.¹³⁷ CCFC expresses concern about the propriety of some BusRadio commercials for their intended audience. For example, CCFC points to ads carried during BusRadio's elementary school program for "highly sexualized" *Bratz* merchandise that is purportedly "controversial with many parents" and was found by the American Psychological Association to "contribut[e] to the sexualization of young girls."¹³⁸ CCFC notes that, although *Bratz* merchandise is also advertised during children's television programming, children exposed to such ads are not part of a captive BusRadio audience because parents can prevent their child from viewing channels where such ads air.¹³⁹ CCFC also points to

¹²⁹ BusRadio Comments at 2; BusRadio Response at 8-9. For a comprehensive description of BusRadio's content review process, *see supra* Section III.A.1.

¹³⁰ BusRadio Response at 9.

¹³¹ *Id.*

¹³² *See* BusRadio, www.busradioparents.com/myth-vs-reality (visited May 12, 2009).

¹³³ *Id.*

¹³⁴ BusRadio Comments at 2.

¹³⁵ *Id.* *See* Center on Alcohol Marketing and Youth Monitoring Report: *Youth Exposure to Alcohol Advertising on Radio 2006*, Sept. 17, 2007, at 1, <http://camy.org/research/radio0907/radio0907.pdf>. *See also* Brian A. Primack, Madeline A. Dalton, Mary V. Carroll, Aaron A. Agarwal, Michael J. Fine, *Content Analysis of Tobacco, Alcohol, and Other Drugs in Popular Music*, 162 *Archives of Pediatric and Adolescent Medicine*, vol. 2 at 169-175 (Feb. 2008), <http://archpedi.ama-assn.org/cgi/reprint/162/2/169.pdf>.

¹³⁶ *See* CCFC Reply at 3.

¹³⁷ CCFC Comments at 23.

¹³⁸ *Id.*, *citing* American Psychological Association, Task Force on the Sexualization of Girls, *Report of the APA Task Force on the Sexualization of Girls*, www.apa.org/pi/wpo/sexualization.html, at 14 (2007).

¹³⁹ CCFC Comments at 23.

other advertisements that it claims are deceptive,¹⁴⁰ stimulate a child's unreasonable expectations regarding a product's quality or performance,¹⁴¹ and encourage students to engage in activities that are counterproductive to their academic success.¹⁴²

32. As noted above, in considering the propriety of BusRadio for its child audience, we find that some of the rules applicable to Commission regulatees in the area of children's programming offer an appropriate measure for assessing whether a particular program or practice is in the public interest.¹⁴³ While the Communications Act and the Commission's rules do not generally prescribe specific requirements regarding the content of advertisements directed to children, television licensees are subject to a host of provisions that govern the manner in which such ads may be aired. For example, one of the Commission's principal restrictions in this area limits the amount of commercial matter¹⁴⁴ that may be broadcast during children's television programming to 10.5 minutes per hour on weekends and 12 minutes per hour on weekdays.¹⁴⁵ Viewed against this benchmark, BusRadio's stated four to eight minutes of commercial time per programming hour comes well within the television broadcast limits applicable to Commission licensees.¹⁴⁶ Nevertheless, as discussed below, we find valid some of the concerns raised in this proceeding regarding BusRadio's commercial content and practices.

33. First, we agree with commenters who contend that BusRadio's purported four to eight minutes of advertising likely understates the amount of commercial content actually carried.¹⁴⁷ The record reflects that BusRadio does not count as commercial content promotions or contests conducted by

¹⁴⁰ *See id.* at 24 (claiming that another BusRadio elementary school advertiser, "Tales Runner," lures children to its online gaming site with the promise of free games, yet encourages them to purchase extras for their online character once on the website).

¹⁴¹ *See id.* (arguing that the Vocal Corner Store, a Los Angeles-based talent agency that airs ads on BusRadio's elementary school program, exploits a child's natural desire to become a "star").

¹⁴² *Id.* at 12-13 (referencing two BusRadio elementary school ads that encouraged students to use an Internet service to obtain answers for their homework and to watch television (the WB Network) in the evening after school).

¹⁴³ *See supra* ¶ 12.

¹⁴⁴ The Commission's rules define "commercial matter" as "air time sold for purposes of selling a product or service and promotions of television programs or video programming services other than children's or other age-appropriate programming appearing on the same channel or promotions for children's educational and informational programming on any channel." *See* 47 C.F.R. §§ 73.670(a) Note 1, 76.225(a) Note 1.

¹⁴⁵ *See* 47 C.F.R. §§ 73.670 (applicable to television broadcasters), 76.225 (applicable to cable operators), and 25.701 (applicable to DBS). The Commission's commercial time rules implemented the Children's Television Act of 1990, Pub. L. No. 101-437, 104 Stat. 996-1000, *codified at* 47 U.S.C. §§ 303a, 303b and 394 ("CTA"). In the CTA, Congress directed the Commission to adopt rules that limit the amount of commercial matter that television stations may air during children's programming, and to consider the extent to which the licensee has complied with such limits in its review of television license renewals. The commercial time limits apply to programming originally produced and aired primarily for an audience of children 12 years old and younger. *See* 47 C.F.R. §§ 73.670(a) Note 2, 76.225(a) Note 2.

¹⁴⁶ As noted *supra*, Commission requirements, including the commercial time limits governing children's programming, do not apply to an unregulated commercial programming service such as BusRadio. Given that BusRadio distributes its commercial programming and other promotional material to an audience of children, however, those requirements are relevant in evaluating whether BusRadio's service promotes the public interest.

¹⁴⁷ *See* CCFC Comments at 20 (although BusRadio's commercial time estimate facially meets the FCC's requirements, BusRadio understates the amount of "commercial content" because it does not count contests as paid sponsorship time).

its on-air personalities,¹⁴⁸ despite the fact that both the Commission and Children's Advertising Review Unit¹⁴⁹ policies recognize that commercial content includes more than simply advertisements.¹⁵⁰ For example, CCFC points to one middle school program that promoted a contest to win a copy of Nintendo's Guitar Hero game.¹⁵¹ Commenters further note that BusRadio, on several occasions, has used on-air personalities to engage in a variety of promotions.¹⁵²

34. BusRadio's use of on-air personalities to conduct promotions, including contests, makes it difficult to gauge with precision the amount of commercial content actually distributed, and has the potential to confuse children.¹⁵³ In this regard, we note that the Commission has several longstanding requirements that are designed to protect children from confusion that may result from the mixture of program and commercial material.¹⁵⁴ As the Commission found in adopting its children's programming

¹⁴⁸ See www.busradio.net (visited May 12, 2009) (BusRadio content involving on-air personalities and contests is regarded as "original programming").

¹⁴⁹ The Children's Advertising Review Unit of the Council of Better Business Bureaus is the "children's arm of the advertising industry's self-regulation program." See Children's Advertising Review Unit, www.caru.org/about. CARU was founded in 1974 to promote responsible children's advertising as part of a strategic alliance with the major advertising trade associations through the National Advertising Review Council. CARU "evaluates child-directed advertising and promotional material in all media to advance truthfulness, accuracy and consistency with its *Self Regulatory Guidelines for Children's Advertising* and relevant laws." In cases where CARU finds advertising to be "misleading, inaccurate or inconsistent" with its guidelines, it seeks to effect "change through the voluntary cooperation of advertisers." *Id.* It is unclear whether CARU has evaluated, or plans to evaluate, BusRadio's programming service, though it recently issued a press release stating that it had recommended that BusRadio modify its website to better protect children's privacy. See CARU News, *CARU Recommends BusRadio Modify Website To Better Protect Children's Privacy; Company Agrees To Do So*, Aug. 10, 2009, available at <http://www.caru.org/news/2009/5058PR.pdf>. Regardless whether CARU affirmatively reviews BusRadio's commercial content, BusRadio could choose to conform its advertising practices to CARU's guidelines, which are publicly available on its website. Children's Advertising Review Unit, <http://www.caru.org/guidelines/guidelines.pdf>. BusRadio has not indicated whether it does so.

¹⁵⁰ See *Children's Television Programming*, 6 FCC Rcd 2111, 2117-18, recon., 6 FCC Rcd 5093, 5097, 5098-99 (1991)(stating that the Commission counts as commercial material programs associated with a product, in which commercials for that product are aired, otherwise known as "program-length commercials"); 47 C.F.R. §§ 73.670(b), 76.225(b) (providing that displays of Internet website addresses during program material will be counted as commercial time unless certain conditions are satisfied); CARU Guidelines, Section II.D.2.(e)(2) (providing, among other things, that advertising should not be presented in a manner that blurs the distinction between advertising and program/editorial content in a way that is misleading to children).

¹⁵¹ CCFC Comments at 20. Although the Commission and CARU have adopted provisions governing contests, none of the commenters in this proceeding have asserted that BusRadio's contests run afoul of such provisions. See 47 C.F.R. § 73.1216; CARU Guidelines, Section II.D.2.(f).

¹⁵² Obligation, Inc. Comments at 12 (referencing a promotion of the television program "Aliens in America" by BusRadio DJs); CCFC Comments at 14 (referencing a BusRadio DJ's promotion for Excitebots Trick Racing and the Nintendo Wii gaming system); *id.* at 22 (claiming that BusRadio does not count as commercial content its promotion of exclusive music artists in which it has a financial interest).

¹⁵³ See CCFC Comments at 16 ("Commercials that feature the BusRadio hosts may be particularly confusing to young listeners because the types of products advertised (websites, movies, videogames) are the same things the hosts discuss during their DJ banter").

¹⁵⁴ For example, the Commission requires broadcasters to use separations or "bumpers" between programming and commercials to assist children in distinguishing between advertisements and program content. In addition, the Commission considers any children's programming associated with a product, in which commercials for that product are aired, to be a "program length commercial." See *Policies and Rules Concerning Children's Television* (Continued on next page)

rules, “children who have difficulty enough distinguishing . . . program content from unrelated commercial matter [should] not be [made] more confused by a show that interweaves program content and commercial matter.”¹⁵⁵ These concerns are similarly reflected in the CARU Guidelines, which instruct advertisers to “recognize that children may have difficulty distinguishing between program/editorial content and advertising, *e.g.*, when program/editorial characters make advertising presentations or when an advertisement appears to be content to the intended audience.”¹⁵⁶

35. We also find, as some commenters assert, that BusRadio’s promotional practices have the potential to exploit the relationship between BusRadio’s on-air personalities and its young listeners.¹⁵⁷ In recognition of the impact of so-called “host-selling”¹⁵⁸ on children, the Commission’s children’s television requirements prohibit “the use of program characters or show hosts to sell products in commercials during or adjacent to shows in which the character or host appears.”¹⁵⁹ Similarly, CARU Guidelines provide that a “character or personality associated with the editorial/content of the media should not be used to sell products, premiums or services in close proximity to the program/editorial content, unless the advertiser makes it clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.”¹⁶⁰ BusRadio’s use of program hosts to deliver promotions thus appears to raise the same types of concerns that these restrictions were intended to address.¹⁶¹

36. In addition to the advertising and promotions that comprise BusRadio’s programming, some commenters express concern about BusRadio’s child-targeted website,¹⁶² arguing that the website is

Programming, Report and Order, 6 FCC Rcd 2111, 2117-8 (1991), *recon. granted in part*, 6 FCC Rcd 5093 (1991). We find that the policies underlying these Commission requirements are equally relevant to a service such as BusRadio because the manner in which BusRadio presents its promotional content is potentially confusing to children, who cannot readily distinguish between editorial programming and commercial content.

¹⁵⁵ See *Children’s Television Programming Order*, 6 FCC Rcd at 2118.

¹⁵⁶ CARU Guidelines, Section II.D.2(e)(1).

¹⁵⁷ *Obligation, Inc.* Comments at 11 (“BusRadio DJs work to create trust between them and the captive audience of young listeners, then they trade on that trust by using their recognizable voices to tell kids how wonderful a certain . . . product is . . . that is a major advertiser on the show”).

¹⁵⁸ “Host-selling” refers to “the use of program talent to deliver commercials,” including “endorsements or selling by animated cartoon characters as well as ‘live’ program hosts.” See *Policies and Rules Concerning Children’s Television Programming*, Order on Reconsideration, 6 FCC Rcd 5093, 5097 (1991).

¹⁵⁹ See *Children’s Television Report and Policy Statement*, 50 FCC 2d 1, 13-14. As noted above, the policies that formed the basis for the children’s programming requirements, including the host-selling restriction, are equally relevant to a service like BusRadio. See *supra* note 146.

¹⁶⁰ CARU Guidelines, Section II.D.2.(e)(4).

¹⁶¹ Some commenters also criticize BusRadio for not counting as commercial content promotions of certain songs and labels in which BusRadio has a financial stake. See *Obligation, Inc.* Comments at 10 (claiming that one singer pushed as a “star” on BusRadio lists his record label as “BusRadio,” and that BusRadio owns the copyright to at least one of his songs); CCFC Reply at 3, CCFC Comments at 22 (asserting that BusRadio has described two singers featured on its program as “exclusive artists” of BusRadio).

¹⁶² See BusRadio, www.busradio.com. Launched in 2008, BusRadio.com is an entertainment website that allows its student audience to “listen to BusRadio [programs], request their favorite songs, and learn more about their favorite artists.” See BusRadio, www.busradioparents.com/q-and-a. BusRadio asserts that its website is a “safe, controlled online environment,” and that its intention is to facilitate interaction among users of the site, while complying with the Federal Trade Commission’s Online Privacy Protection Act (“COPPA”). See BusRadio, www.busradio.com/privacy (visited May 12, 2009). As noted above, in response to a recommendation by CARU, BusRadio recently agreed to update its website’s privacy policy and modify its method of obtaining parental consent

(Continued on next page)

a much larger advertising assault on children than the company's radio programs.¹⁶³ As one commenter notes:

An additional rapidly growing concern is the integration of advertising through traditional media, such as radio, with marketing over the Internet and other new media platforms. These integrated strategies use traditional media to drive children to online platforms, where they can be targeted without any adult interference, and involving major issues of privacy protection.¹⁶⁴

CCFC likewise asserts that BusRadio's programs drive students to its commercial website, where children are exposed to additional advertising and age-inappropriate media.¹⁶⁵ BusRadio admits that its listeners are prompted to interact with the company's website.¹⁶⁶

37. The Commission's rules governing children's television programming, among other things, permit the display of a website address during program material only if the website meets certain criteria.¹⁶⁷ If BusRadio were subject to rules akin to the Commission's children's television rules, children's programming containing a mention of a website primarily intended for commercial purposes, or whose homepage contains e-commerce, advertising or other commercial material, would be prohibited.¹⁶⁸ In this regard, we note that BusRadio's child-targeted website appears to be a significant vehicle for commercial activity.¹⁶⁹

38. Moreover, BusRadio's Internet website does not appear to maintain a clear distinction between editorial and commercial content, contrary to CARU Guidelines. Such guidelines provide that,

for its message boards. See CARU News, *CARU Recommends BusRadio Modify Website To Better Protect Children's Privacy; Company Agrees To Do So*, Aug. 10, 2009, at 1, <http://www.caru.org/news/2009/5058PR.pdf>.

¹⁶³ Obligation, Inc. Comments at 11; CCFC Comments at 22.

¹⁶⁴ Commercial Alert Comments at 3, citing Jeff Chester and Kathryn Montgomery, *Interactive Food and Beverage Marketing: Targeting Children and Youth in the Digital Age*, Center for Digital Democracy (May 2007) at 61-62, available at www.digitalads.org/reports.php.

¹⁶⁵ CCFC Comments at 22; Joint Letter from Susan Linn, Director, CCFC, and Jim Metrock, Director, Obligation, Inc., to Michael J. Copps, Acting Chairman, Federal Communications Commission at 2 (June 30, 2009).

¹⁶⁶ See BusRadio, www.busradio.com/about (visited July 20, 2009) ("Students are driven to interact with the BusRadio show on air and online at Busradio.com").

¹⁶⁷ In particular, the Commission's rules provide that the display of Internet website addresses during programs directed to children ages 12 and under is permitted only if the website meets all of the following criteria: (i) the website offers a substantial amount of *bona fide* program-related or other noncommercial content; (ii) the website is not primarily intended for commercial purposes, including either e-commerce or advertising; (iii) the website's home page and other menu pages are clearly labeled to distinguish the noncommercial from the commercial sections; and (iv) the page of the website to which viewers are directed is not used for e-commerce, advertising, or other commercial purposes (for example, contains no links labeled "store" and no links to another page with commercial material). See 47 C.F.R. §§ 73.670(b), 76.225(b); see also *Children's Television Second Report and Order*, 21 FCC Red 11077-78, ¶¶ 29-32 (emphasis in original).

¹⁶⁸ For the reasons above, we find that the policies underlying the children's programming requirements, including the provisions concerning the display of website addresses, are equally relevant to a commercial programming service such as BusRadio. See *supra* note 146.

¹⁶⁹ See Radiant UX, www.radiantux.com/Busradio (visited May 12, 2009). Radiant UX, a "human-focused strategy and design group," states that it assisted BusRadio in designing a website that, among other things, "tied on-air promotions and provided engaging user-generated content to keep their fickle tween and teen audience tuned in. . . . Site traffic and page views doubled and ad generated revenue provided a new revenue stream." *Id.*

“[o]n [w]ebsites directed to children, if an advertiser integrates an advertisement into the content of a game or activity, then the advertiser should make clear, in a manner that will be easily understood by the intended audience, that it is an advertisement.”¹⁷⁰ CCFC references several examples in which BusRadio has blended editorial and commercial content on its website without labeling the latter in any way.¹⁷¹

39. BusRadio’s critics also take issue with the age-appropriateness of BusRadio’s promotions.¹⁷² For example, CCFC notes that BusRadio.com promotes the new “90210,” a television program that CCFC says “glamorizes teen sex and drinking,”¹⁷³ despite concerns voiced by child advocacy groups.¹⁷⁴ CCFC is concerned that “[f]rom a developmental perspective, it is difficult to understand how BusRadio . . . can create content that will be both interesting to seventeen-year-olds and appropriate for six-year-olds.”¹⁷⁵

40. Our review of the record leads us to conclude that the amount of commercial matter distributed on BusRadio likely exceeds that claimed by the company. In addition, the manner in which BusRadio presents content to its audience, *i.e.*, without separating commercials from programming, complicates the process of quantifying accurately the amount of advertising actually distributed, and has the potential to confuse children. BusRadio could conform its programming practices to standards established by the Commission for broadcast television licensees and independent regulatory bodies such as CARU. These standards are designed to address several of the concerns raised in this proceeding regarding BusRadio’s commercial content.¹⁷⁶

C. Safety Issues

41. BusRadio states that safety is the principal reason school districts choose to affiliate with it.¹⁷⁷ In addition to PSAs and safety messages, BusRadio’s services include GPS tracking, direct access to emergency 911 services, and internal/external public address systems.¹⁷⁸ BusRadio claims that its service is a behavioral aid that reduces driver distractions, and notes that bus drivers’ use of a public address system obviates the need for them to shout or repeat themselves.¹⁷⁹ BusRadio points to the results of a bus driver survey conducted by Edison Media Research for BusRadio showing that overall student behavior on school buses improved with the use of BusRadio programming; kids remained seated; willingness to follow rules increased; overall noise levels were reduced; and driver distractions were

¹⁷⁰ CARU Guidelines, Section II.D.2.(e)(5).

¹⁷¹ CCFC Comments at 30-32 (referring to website promotions for the new “90210” and “Star Wars: The Clone Wars” in which promotional material appeared adjacent to editorial content).

¹⁷² Obligation, Inc. Comments at 5-6; CCFC Comments at 23-25.

¹⁷³ CCFC Comments at 29-31.

¹⁷⁴ *Id.* at 29, citing Parents Television Council, *PTC Slams CW, Puts ‘90210’ Advertisers on Notice* (press release), August 25, 2008.

¹⁷⁵ *Id.* at 29.

¹⁷⁶ BusRadio states that it is willing to revise the way it integrates its promotions into its programming. BusRadio Supplemental Filing, July 13, 2009.

¹⁷⁷ BusRadio Comments at 1.

¹⁷⁸ *Id.* As noted above, BusRadio states that it is also developing a bus stop proximity notification service designed to provide subscribing parents with information about bus stop arrival time. BusRadio Response at 3.

¹⁷⁹ *Id.* at 10.

minimized.¹⁸⁰ In addition, BusRadio cites the results of a student survey commissioned by BusRadio showing that 75 percent of those surveyed recalled bus safety messages.¹⁸¹ BusRadio further states that it programs safety tips and songs aimed at drivers at the start of its programs before students have boarded, and that it adheres to all state and local requirements regarding the placement of speakers.¹⁸² According to BusRadio, its safety features have played an important role in busing incident investigations, including accident reconstruction.¹⁸³

42. Obligation, Inc. rejects these claims, arguing that BusRadio's placement of speakers, volume of programs and content diminish bus safety.¹⁸⁴ In support of its assertions, Obligation, Inc. points to a National Transportation Safety Board ("NTSB") bus accident report that recommended the adoption of restrictions on the use of radios on school buses.¹⁸⁵ In its report on a 2000 collision involving a train and a school bus, the NTSB found, among other things, that because the bus driver had the radio turned on and the door closed, she was unable to detect the train horn and likely was unaware of the train's presence.¹⁸⁶ Following the investigation, NTSB recommended that speakers located near bus drivers' heads be disabled, and that states develop guidelines for the use of radios and placement of speakers on buses.¹⁸⁷ Obligation, Inc. also raises concerns about BusRadio's practice of targeting programming to bus drivers, arguing that such practices, which are designed to give incentives to drivers to play BusRadio, are unsafe for passengers.¹⁸⁸ In addition, CCFC calls into question the validity of BusRadio's surveys on the basis of their sample size and potential bias.¹⁸⁹

43. As these conflicting views demonstrate, BusRadio has the potential both to enhance and hamper the safety of bus passengers. Given the paramount importance of this issue for children who are or could be recipients of BusRadio, it would be beneficial for parents and other relevant stakeholders to engage in a timely and extensive dialogue about whether the safety benefits of BusRadio service clearly outweigh any potential harms.

¹⁸⁰ BusRadio Comments at 1 (*citing* BusRadio Bus Driver Survey, Edison Media Research, May/June 2005, Att. to BusRadio Comments).

¹⁸¹ BusRadio Student Survey, Edison Media Research, January 2009, BusRadio Comments, Att.

¹⁸² BusRadio Response at 13.

¹⁸³ *Id.* at 3.

¹⁸⁴ Obligation, Inc. Comments at 7.

¹⁸⁵ *Id.* at 7-8 (*citing* Lesli A. Maxwell, *School Bus Radio Venture Raises Safety, Commercialism Concerns*, EDUCATION WEEK, Sept. 20, 2006). The *Education Week* article referenced two separate accident collisions in 1995 and 2000 involving trains and school buses.

¹⁸⁶ NTSB Highway Accident Report, NTSB/HAR-01/03, December 11, 2001, at 42 ("2001 Report").

¹⁸⁷ 2001 Report at 42.

¹⁸⁸ Obligation, Inc. asserts that BusRadio has held contests involving monetary giveaways directed exclusively to bus drivers. It claims that such contests often invite drivers to phone BusRadio to register and then listen for their name to be called out on the program as they drive their route. Obligation, Inc. Comments at 8.

¹⁸⁹ In particular, CCFC asserts that BusRadio's Edison Media Research study canvassed only ten bus drivers, an insufficiently large sample from which to draw any meaningful conclusions. CCFC Reply at 1. CCFC also questions whether the survey is biased as a result of conflicts of interest, noting that the 2005 bus driver survey was conducted using drivers from a bus company whose Director of Operations subsequently departed the company to join BusRadio. *Id.* at 1-2.

D. Whether Commercial Programming Services for Reception by Public School Buses Are In the Public Interest

44. To determine whether BusRadio serves the public interest requires a decision maker to balance a variety of considerations, given the service's potential harms and benefits to its intended recipients. We are mindful of concerns expressed by some parties that the harms resulting from BusRadio's programs and practices far outweigh any countervailing benefits. At the same time, we recognize that BusRadio is currently providing service to a number of school districts nationwide that, for various reasons, have arrived at a contrary conclusion. Because the needs and concerns of individual school districts and parents vary greatly by geographic location and community, we conclude that the issue of whether BusRadio, in general, serves the public interest is one most appropriately decided by these and other stakeholders at the local level. In deciding whether to enter a contract with BusRadio or similar services, school districts and parents should have answers to a number of questions. Is the programming age-appropriate? How can interested parties monitor the content? What are the standards BusRadio uses to select the content? How much commercial time, including promotions and endorsements, is played per hour? Are the commercials age-appropriate? Does BusRadio clearly separate commercials from music and other programming content? Is it clear to the student listener what is programming and what are commercials? Does the service mention website addresses that contain commercial content? With respect to safety issues, interested parties should know whether school bus drivers are trained to use BusRadio services in an emergency. Can the BusRadio programming interfere with public service announcements? Can the programming distract the drivers? Can the drivers turn the BusRadio units off? Can the programming interfere with students' other educational demands, their interactions with other students, or their use of their own electronic devices? What practical right does a participating school district have to terminate the Agreement due to concerns raised by parents or otherwise?

IV. CONCLUSION

45. Although a number of parties in this proceeding, many of whom have direct experience with BusRadio, support the service, the overwhelming majority of commenters assert that the potential harms inflicted on children by BusRadio far outweigh the service's countervailing benefits. These divergent views confirm our belief that the issue of whether BusRadio serves the needs of children should reside at the local level, with the parents, schools districts and other parties charged with protecting the interests of those directly affected by the service. We urge school districts to elicit early and active involvement by parents and caregivers in any decision relating to BusRadio or similar services. We note, however, that these custodians are able to make informed decisions about BusRadio only if provided with access to adequate information regarding the programming practices and content to which children are exposed. To that end, we encourage BusRadio to adopt more specific content guidelines, make them easily accessible on its website, and establish processes that allow parents and other parties to monitor its programming in a timely and effective manner. Such measures will empower these stakeholders to make educated decisions about BusRadio that advance the best interests of children.

V. ORDERING CLAUSES

46. Accordingly, **IT IS ORDERED** that, pursuant to the authority contained in Sections 4(i), 303(g), and 403 of the Communications Act, 47 U.S.C. §§ 154(i), 303(g), and 403, the Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, Division D (2009), and the authority delegated to the Media Bureau pursuant to Sections 0.61 and 0.283 of the Commission's Rules, 47 C.F.R. §§ 0.61, 0.283, this *Report* **IS ADOPTED**.

47. It is **FURTHER ORDERED** that the Office of Legislative Affairs shall deliver copies of this *Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

48. It is **FURTHER ORDERED** that the proceeding in MB Docket No. 09-68 **IS TERMINATED**.

FEDERAL COMMUNICATIONS COMMISSION

William T. Lake
Chief, Media Bureau

APPENDIX A



FINAL

Content Guidelines

This document outlines content guidelines for the Bus Radio national radio program that plays on schools buses across the United States. These guidelines were developed by a Content Review Board that includes respected leaders in the fields of child psychology, education, publishing and music programming. Content Review Board Members are:

[REDACTED]

Overall Content Guidelines

Bus Radio will...

- Refrain from any content that qualifies as “inappropriate subject matter” according to the Content Review Board. This includes references to:
 - Assault and other violence
 - Criminal acts
 - Gang activity
 - Guns and other weapons
 - Disrespect
 - Drugs, alcohol and smoking
 - Swear words
 - Racial, religious and sexual slurs or other prejudice
 - Sexual innuendo

- Avoid content that is political or partisan

- Strive to play content that educates, entertains and positively impacts kids

- Remove any content that is deemed questionable by a parent, school official or other interested party
- Encourage commercial sponsors to deliver positive, socially responsible messages
- Carefully screen content of all advertisements to ensure messages and subject matter are appropriate (e.g. no commercials for unhealthy fast food)
- Update Public Service Announcements regularly to reflect the most current issues facing children
- Play only music that has passed the rigorous Music Review Process
- Post these content guidelines on the company's web site

Music Review Process

1. Bus Radio reviews all CD packaging for printed lyrics and Parental Advisory stickers. The Parental Advisories are much more lenient than Bus Radio's standards, but they are a helpful warning. Bus Radio also reviews packaging on all "Promo Only" and record company advance CDs. They contain content warning markings and specify whether a cleaner edit is available.
2. Bus Radio listens carefully to potential songs for the play list twice, from start to finish. Bus Radio listens for curse words, sexual innuendo/noise, references to violence, and other inappropriate subject matter.
3. Bus Radio listens to the song again while reading the lyrics to double check step two. Once Bus Radio confirms a song is clean from start to finish, after it passes the first two steps, we submit it to our system for airplay on the appropriate Bus Radio channel.

#

APPENDIX B

BUS RADIO

SCHOOL DISTRICT AND BUS SERVICE TERMS

CUSTOMER INFORMATION

SCHOOL DISTRICT

BUS COMPANY NAME (if applicable)

MAILING ADDRESS

CITY / TOWN STATE ZIP CODE

AUTHORIZED AGENT

NAME TITLE

PHONE NUMBER EMAIL ADDRESS

TOTAL NUMBER OF TYPE C and D BUSES:

ESTIMATED NUMBER OF CHILDREN TRANSPORTED:

TIMELINE FOR LAUNCH:

DATE OF CONTRACT:

By signing below (i) the parties herein acknowledge that each has read and understands the Terms and Conditions attached as Exhibit A, which are incorporated herein by reference, (ii) each of School District and Bus Radio agree to abide by such Terms and Conditions, and (iii) the signatory warrants that he or she has the authority to so acknowledge and agree.

School District/Customer

BUS RADIO

By: Name: Title:

By: Name: Title:

EXHIBIT A

TERMS AND CONDITIONS

1. Bus Radio, Inc. (hereinafter “Bus Radio” or “BR”) is a Delaware corporation providing age appropriate programming (the “Content”) directly and exclusively to Bus Radio transmission systems and related equipment installed (the “Radio Equipment”) in school buses owned and bus depots operated by the School District without charge to the School District. For purposes of this agreement, the Radio Equipment installed may include, without limitation, a bus player, global positioning system, amplifier, user interface, antenna, wires, speakers, Wi-Fi equipment, internet connectivity devices and/or all other things as BR may deem necessary in its discretion to ensure the proper working of said equipment. The installation of the Radio Equipment shall be done exclusively by BR (or its agents) in its sole discretion, in a manner that shall not interfere with the operation and safety of the vehicle or the operation of the depots. The School District is also referred to herein as the “Customer”.
2. School District has the right to review and comment on the Content. The Content shall comply with Bus Radio’s Content Board policies prior to its transmission. School District has the right to reject the Content at any time if it deems such Content age inappropriate, such rejection to be in the School District’s sole discretion, provided, however, that this right shall not be deemed and is not intended to be the right to dictate Content.
3. For good and valuable consideration, including, but not limited to, the exclusive right to install the Radio Equipment and provide the Content on all buses serving the School District, Bus Radio agrees to provide the following to the School District:
 - a. Installation and maintenance of Radio Equipment in school buses and depots designated by Bus Radio without charge to Customer;
 - b. Content approved by Bus Radio’s Content Board without charge to Customer;
 - c. The right to review and refuse Content provided, however, that such refusal shall only be made with respect to age inappropriateness Content;
 - d. Access to Content posted online; and
 - e. The inclusion of public service and safety messages as part of the Content.
4. For good and valuable consideration, including, but not limited to, the promises and covenants of Bus Radio described above, Customer agrees to provide the following to Bus Radio:
 - a. The exclusive right to provide Content through the Radio Equipment on all buses and at all depots within the School District and any or all buses owned and operated, and depots operated, by the School District for a term of five (5) years (together with any extensions, the “Term”), which Term shall be extended for successive one (1) year periods unless terminated by either party at least sixty (60) days prior to the end of each extended Term;
 - b. The right to designate which buses and/or depots will have Radio Equipment;
 - c. Demographic and other information needed to determine the number of students riding buses and pick-up and drop off times, provided, however, that nothing herein shall require Customer to provide Bus Radio personally identifiable information about any person, in particular about any minor;
 - d. The right to determine the format, timing and delivery of the Content;
 - e. The right, during the Term, to offer and provide ancillary products and services designed to supplement, upgrade and / or enhance existing systems, including but not limited to after-school, activity and summer programming, bus safety and security screening, and GPS location systems;
 - f. Prompt notice upon the School District’s decision to use a bus company not owned and operated by the School District or to terminate its relationship with any bus company to which Bus Radio is supplying Programming and reasonable cooperation with Bus Radio’s efforts to contract with any new bus company engaged by the School District.
 - g. The use of Customer’s best efforts to ensure that the Radio Equipment is used on a regular basis; and

- h. Notification of the failure, disrepair or non-functioning of any of the Radio Equipment to Bus Radio in a timely fashion. In addition, in the event that School District determines that Radio Equipment interferes with the proper operation of the vehicle, it shall immediately report such to Bus Radio in writing. Any required repairs, replacement or modifications to or of the Radio Equipment shall be made at Bus Radio's sole cost and expense.
5. School District shall be entitled, together with any other school districts with which Bus Radio has contracted, to participate in a revenue sharing pool established by Bus Radio (the "Revenue Pool"). The Revenue Pool shall consist of cash in the amount of five percent (5%) of gross advertising sales associated with on-bus programming (the "Pool Amount"). Bus Radio will, in its sole discretion, determine how the Pool Amount is distributed amongst all school districts contracting with Bus Radio according to a formula. The formula shall take into account the length of the contract and duration of the contract relationship with each school district, the number of students in the school district and the usage of the Content as monitored by Bus Radio.
6. School District agrees that it shall not in anyway alter, modify or remove the Radio Equipment from any vehicle or depot nor shall it utilize the Radio Equipment or the media content being transmitted through the Radio Equipment in any manner other than as specifically authorized by Bus Radio in writing. School District shall insure that, to the extent reasonably possible, the Radio Equipment installed in its vehicles is secure when the vehicles are not being used. If any vehicle's Radio Equipment is required to be operated by the driver then School District shall instruct its drivers on its policies with respect to the operation of the Radio Equipment. Bus Radio shall provide any instruction to School District for any functions that may be performed by bus drivers or other personnel of School District, if any. In the event that Bus Company alters or removes the Radio Equipment or acts negligently in the operation or safekeeping of the Radio Equipment, Bus Radio shall have the right, in its sole discretion, to remove the Radio Equipment from School District's vehicles and depots and immediately terminate the arrangement between the parties evidenced by these Terms and Conditions. School District covenants and agrees that it will not reproduce, distribute, copy or in any other way modify or alter the Content.
7. Bus Radio shall defend or settle any suit or proceeding brought against School District based upon a claim relating to the Radio Equipment or the Content, provided that Bus Radio is notified promptly in writing and is given complete authority to control the defense and is provided all information required for the defense. Bus Radio shall pay all damages and costs awarded against School District, but shall not be responsible for any cost, expense or compromise incurred or made by School District without Bus Radio's prior written consent or for any lost profits or other damage or loss suffered by School District. Notwithstanding the foregoing, Bus Radio shall have no responsibility in connection with claims resulting from any modification or alteration of the Radio Equipment or the Content or for any negligence of School District in connection with the operation of the Radio Equipment. School District agrees to indemnify and hold harmless Bus Radio for any damages and costs resulting from any modification or alteration of the Radio Equipment or the Content or any negligence of School District in connection with the operation of the Radio Equipment.
8. Bus Radio has the right to terminate the agreement between the parties evidenced by these Terms and Conditions at any time and for any reason by providing written notice to School District, which termination shall be effective thirty (30) days after the date of such notice. School District may terminate the school district service terms and these terms and conditions any time if the Content is, in its reasonable and good faith belief, continually objectionable to the School District. Prior to any termination referred to in the previous sentence, the School District must notify Bus Radio in writing of its objection, provide in such notice a description of the objectionable Content and give Bus Radio thirty (30) days to cure or remove such objectionable Content.
9. EXCEPT FOR THE WARRANTIES WITH RESPECT TO PROGRAMMING EXPRESSLY SET FORTH HEREIN, BUS RADIO MAKES NO WARRANTIES WITH RESPECT TO THE RADIO EQUIPMENT OR THE PROGRAMMING PROVIDED HEREUNDER. THE WARRANTIES CONTAINED HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY AND

FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE RADIO EQUIPMENT OR THE PROGRAMMING. In no event shall Bus Radio be liable for loss of profits or indirect, special, incidental, or consequential damages arising out of any breach of these Terms and Conditions or the obligations of these Terms and Conditions. School District's exclusive remedy, and Bus Radio's total liability, in contract, tort or otherwise, arising out of or in any way connected with the arrangement between the parties evidenced by these Terms and Conditions or any of the Radio Equipment or the Programming provided hereunder, shall be the correction, repair or replacement of any defective Radio Equipment.

10. Throughout the term of the school district service terms and these terms and conditions and in connection with any termination of the school district service terms and these terms and conditions pursuant to Sections 4(a) or 8, Bus Radio shall retain all ownership interest in (i) the Radio Equipment, (ii) any other product installed on any and all school buses or depots, and (iii) all related material, including, without limitation, information and data derived through the operation of the Radio Equipment. Upon any such termination of this agreement, Bus Radio shall retain the right to promptly remove the Radio Equipment, such other product and related materials. School District agrees to make its vehicles and access to its depots available to Bus Radio for the removal of the Radio Equipment, such other product and related materials.
11. The relationship of the parties hereto shall be that of independent contractors. Nothing herein shall be construed to create any partnership, joint venture, agency or similar relationship, or to subject the parties to any implied duties or obligations respecting the conduct of their affairs which are not expressly stated herein. Neither party shall have any right or authority to assume or create any obligation or responsibility, either express or implied, on behalf of or in the name of the other party, or to bind the other party in any matter or thing whatsoever.
12. These Terms and Conditions and performance of the parties' obligations hereunder shall be governed by and construed in accordance with the laws of the State of Massachusetts.
13. School District and Bus Radio each acknowledges that it has read these Terms and Conditions, fully understands them, and agrees to be bound by them and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written between the parties relating to the subject matter hereof. These Terms and Conditions cannot be modified or altered except by a written instrument duly executed by both parties.
14. If any provision of these Terms and Conditions shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. Further, the provision that is held to be invalid, illegal or unenforceable shall remain in effect as far as possible in accordance with the intention of the parties.
15. The failure of School District or Bus Radio to exercise in any respect any right provided for herein shall not be deemed a waiver of any right hereunder.
16. Bus Radio may assign its rights and obligations hereunder without the written consent of School District to a corporation succeeding to substantially all the assets and business of Bus Radio or by merger or purchase of Bus Radio's capital stock, which corporation shall expressly assume all of Bus Radio's obligations under these Terms and Conditions by a writing delivered to School District. School District may not assign its rights and obligations hereunder in whole or in part without the prior written consent of Bus Radio.
17. Notices to either party under or relating to these Terms and Conditions shall be in writing to the address indicated on the first page of this agreement, or to such subsequent address as either party may specify by notice to the other, and shall be deemed effective when received, or on the second day following the date of postmark if sent by prepaid certified mail, return receipt requested.